IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1193 of 1982

With

FIRST APPEAL No. 1194 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ABHRAMBHAI S MOHMEDAB SINCE DECEASED THRO'HIS HEIRS.

Appearance:

Mr. B.Y. Mankad, AGP for appellant.

Mr. B.H. Upadhyay for Respondents.

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE K.A.PUJ

Date of decision: 11/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellant, State of Gujarat, by filing these two appeals under Section 54 of the Land Acquisition Act, 1894, (to be referred to as the "Act" for short) read with Section 96 of the Code of Civil Procedure, has challenged common judgment and award dated March 20, 1982, passed by the learned Extra Assistant Judge, in Land Reference No. 1 of 1980 and Land Reference No. 2 of 1980 by which common judgment and award the Reference Court determined the market value of the acquired lands of the respondents-claimants at the rate of Rs. 10,000/= per acre as on October 16, 1978.

2. The respondents, by filing Cross Objections No. 38/2002 and 39/2002 under Order 41 Rule 22 of the Code of Civil Procedure, have claimed compensation at the rate of Rs. 12,500/= per acre for the acquired land.

3. As common questions of fact and law arise in the First Appeals as well as Cross Objections and as all the above proceedings arise from common judgment and award, they are disposed by this common judgment. The lands belonging to the respondent-claimants bearing Survey No. 478 situate within the municipal limits of Village-Savarkundla were placed under acquisition for the public purpose of 220 K.V. electric sub-station by the notification under Section 4 (1) of the Act published on October 16, 1978. The notification under Section 4(1) was followed by the issuance of the notification of applying emergency clause which was published in the Government Gazette on October 26, 1978 and the possession of the acquired lands was taken on March 20, 1979.

4. The Land Acquisition Officer, after following the usual procedure under the Act, served notices to the claimants for the determination of the compensation. In response to the issuance of notice by the Land Acquisition Officer the claimants lodged their claim and claimed compensation of Rs. 12,000/= per acre. The Land Acquisition Officer on the strength of materials placed before him and after considering the sale deeds produced by the acquiring body, namely, Gujarat Electricity Board, made his award on August 6, 1979 and offered compensation of the acquired lands at the rate of Rs. 4,000/= per acre. The Land Acquisition Officer also offered compensation to the claimants for trees standing on the acquired land and for Well and structure situated on the acquired land.

5. The respondent-claimants, feeling dissatisfied with the compensation offered by the Land Acquisition Officer, filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer their application to the District Court. In the application, the claimants claimed compensation at the rate of Rs. 5/= per sq.yard for the acquired lands. Accordingly, the Land Acquisition Officer forwarded the application filed by the claimants to the District Court, Bhavnagar which came to be numbered as Land Reference Cases No. 1 and 2 of 1980.

6. Before the Reference Court, the claimants had led oral as well as documentary evidence. The documents in the nature of sale deed were produced by the claimants to justify their claim of compensation at the rate of Rs. 5/= per sq.yard. On behalf of the acquiring body one Suryakant Natvatlal Jani who was at the relevant time serving as Executive Engineer in the Gondal Construction Division was examined at Exhibit 58. The acquiring body had also produced three sale deeds.

7. The Reference Court, on the appreciation of the oral as well as the documentary evidence, determined the market value of the present acquired lands at the rate of Rs. 10,000/= per acre. For the determination of the market value the Reference Court had mainly relied on Sale Deed, Exhibit 26 in respect of Survey No. 183/5 admeasuring 30 gunthas. The land of sale deed, Exhibit 26 was sold at the price of Rs. 24,000/= for area of 30 gunthas. In our view, the Reference Court had erred in placing reliance on the Sale Deed, Exhibit 26, which was executed on February 13, 1981 which was a post-notification sale deed, i.e., after the notification under Section 4 (1) of the Act. The said sale deed was therefore a post-notification sale deed and the Reference Court had seriously erred in placing reliance on the sale deed Exh. 26 for the determination of the market value of the acquired lands. The another sale deed which the Reference Court had not taken into consideration for the determination of the market value was produced at Exhibit 24. By the Sale Deed, Exhibit 24, lands of Survey No. 183/2 admeasuring 2 acres were sold on March 28, 1977 for the consideration of Rs. 25,000/=. The land was sold at a price of Rs. 12,500/- per acre. The notification of the present acquired lands was issued in the month of October 1978 and therefore, in our opinion, Sale Deed Exhibit 24 was executed within the near proximity of time if compared with the publication of the Section 4 notification. In order to prove the sale deed, Exhibit

24, the claimants had examined one Vitthal Bhagwan at Exhibit 23. The witness has sold 2 acres of land by sale deed Exhibit 24 for a consideration of Rs. 25,000/=,the price of which comes to Rs. 12,500/= per acre. The said lands were sold by registered Sale Deed on March 28, 1977. The witness deposed that the acquired lands and the lands under sale deed, Exhibit 24 were at a distance of 500 feet. He deposed that near his land and the acquired lands many housing activities had started and there was vast development surrounding the acquired lands when the notification under Section 4 of the Act was issued. In our opinion, the Sale Deed, Exhibit 24 was a genuine sale deed entered into between willing vendor and willing vendee. It must also not lost out of sight that the sale deed Exhibit 24 was executed in March 1977, whereas the present acquired lands came to be acquired in October 1978. Thus, there was a gap of nearly 1 year and 6 months between the sale deed Exhibit 24 and the acquisition of the present acquired lands. It is a common knowledge that price of the lands increases every year and because of the gap of one year and six months between the sale deed Exhibit 24 and the date of the acquisition, some rise in price shall have to be given. If rise in price is applied at the rate of 15% p.a., the price of the lands of sale deed Exhibit 24 in October 1978 would be around Rs. 14,000/= to Rs. 15,000/=. It is submitted by the learned AGP that lands under sale deed, Exh. 24 was a small area comprising of 2 acres, whereas the acquired lands were having large area and therefore some deduction should be made. It is a settled legal principle that in determining the market value of the acquired land if reliance is placed on a sale deed having small area some suitable deduction should be made. Keeping in view the facts and circumstances of each case, applying the said principle, in our opinion, if a deduction of 30% is made, the market value of the present acquired land would be Rs. 10,000/= per acre as on October 16, 1978. Therefore, we confirm the determination of the market value of the present acquired land by the Reference Court at the rate of Rs. 10,000/= per acre.

8. Pressing the cross-objections filed by the respondent-claimants for the enhancement of compensation, learned advocate, Mr. B.H. Upadhyaya has strenuously urged that looking to the potentiality of the lands and the fact that the lands were situated within the limits of Village-Savarkundla, the Reference Court ought to have determined the market value of the present acquired lands at the rate of Rs. 12,500/= per acre. In our opinion, the submission of the learned counsel for the

respondent-claimants does not deserve any merit. The respondents-claimants had not led any evidence in the nature of sale deeds which justify the claim of enhanced compensation at the rate of Rs. 12,500/- per acre. In our opinion, the determination of the market value by the Reference Court at the rate of Rs. 10,000/= per acre was just and adequate looking to the situation and the potentiality of the acquired land. Acquired lands having the large area would not have fetched rate of more than Rs. 10,000/= per acre on the relevant date. Therefore, we do not find any substance in the cross-objections filed by the respondent-claimants and hence the cross-objections deserve to be dismissed.

9. As a result of the foregoing discussions, the First Appeal No. 1193 of 1982 and 1194 of 1982 are dismissed with no order as to costs. The Cross-Objections Nos. 38/2002 and 39/2002 are also dismissed with no order as to costs. The determination of the market value of the acquired lands of the respondent-claimants at the rate of Rs. 10,000/= per acre as on October 16, 1978, by the Reference Court is confirmed. The statutory benefits extended under Section 23(2) and Section 28 of the Act being eminently just and proper, stand confirmed with no order as to costs.

[M.H. Kadri, J.]

rmr. [K.A. Puj, J.]